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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/563,594

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EXAMINER

LANGMAN, JONATHAN C

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,594	Applicant(s) ONG ET AL.	
	Examiner JONATHAN C. LANGMAN	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) 28-65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/06/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-27, drawn to an article.

Group II, claim(s) 28-65, drawn to a method.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

(1) The special technical feature for each group is not commonly shared.

In particular, the special technical feature of Group I is a composite material. The special technical feature of Group II is curing the mixture within a mold and forming through the application of pressure and heat. Therefore, the inventions or groups of inventions lack unity.

During a telephone conversation with Kim Chote on December 1, 2008 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 28-65 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result**

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in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Information Disclosure Statement

The information disclosure statement filed January 6, 2006 has been considered and made of record.

Claim Objections

Claim 2 is objected to because of the following informalities: Claim 2 recites “marble” twice. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13, and 19-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Sakai et al., (WO/0023524, wherein US 6,750,283 is referenced for its English translation).

Sakai et al. teach a composite structural material comprising a natural aggregate (col. 3, lines 45-50), a polymeric binder, a curing agent (col. 7, lines 35-45), and an

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antimicrobial agent (col. 8, lines 59-67). Since the materials are the same as instantly claimed, it is the Examiners position that the composite of Sakami will have an appearance similar to that of natural stone.

Regarding claim 2, the natural aggregate may be granite, marble, quartz, glass, pottery etc (col. 3, lines 45-50).

Regarding claims 3 and 27, the composite comprises a filler, a pigment, or a colorant (col.3, lines 60-64 and col. 6, lines 57-65).

Regarding claims 4-7, Sakai teaches that the aggregate is preferably greater than 80 wt percent and less than 95% of the total weight of the composition (col. 4, lines 49-60) and the resin (polymeric binder) is preferably less than 20 wt % of the total composition (col. 5, lines 5-10) thus overlapping the instantly claimed ranges.

Regarding claims 8-12, Sakai teaches that the resin (polymeric binder) may be polyester or methyl methacrylate (col. 7, lines 40-col. 8 ,lines 50).

Regarding claims 13 and 19-24, Sakai teaches inorganic substances such as silver, silver oxide, and zeolites in amounts of 5% by weight or less thus overlapping the instantly claimed ranges. Since Sakai teaches overlapping ranges it is expected that the antimicrobial agent is present in an amount sufficient to demonstrate commercially acceptable efficacy against a microbe of concern.

Regarding claims 25 and 26, Sakai teaches using the composite as a kitchen counter (col. 8, lines 62).

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai et al. as applied to claims 1-13, and 19-27 above, in view of Schweizer et al.

“Triclosan: a widely used biocide and its link to antibiotics” or Ramirez et al. (EP 1428805). .

Sakai teaches a composite comprising an inorganic antimicrobial agent. Sakai is silent to the use of organic antimicrobial agents. Triclosan, an organic antimicrobial agent, is known in the art and used in cementitious composite mixtures (Schweizer et al. (page 1, col.1-col.2). Ramirez teaches using organic antimicrobial agents mixed with cementitious aggregates, wherein Triclosan is preferred in amounts of 0.1-5.0 wt %. It would have been obvious to a person having ordinary skill in the art at the time the present invention was made to use Triclosan as an alternative antimicrobial agent in the cementitious composition of Sakai et al., since Triclosan is a known organic antimicrobial component in the art for providing biocidal protection to solid surfaces such as concrete. Choosing an effective amount of the antimicrobial agent, to include the amounts instantly claimed is well within the grasp of a routineer in the art and would have been an obvious modification to the combination of Sakai and Ramirez or Schweizer.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN C. LANGMAN whose telephone number is (571)272-4811. The examiner can normally be reached on Mon-Thurs 8:00 am - 6:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JCL

/Timothy M. Speer/
Primary Examiner
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